IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 758 of 1989

For Approval and Signature:
HONOURABLE MR.JUSTICE R.S.GARG

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

ORIENTAL FIRE AND GENERAL INSURANCE CO LTD - Appellant(s)
Versus
PATEL DHULIBEN WD/O MAGANLAL HIRABHAI & 6 - Defendant(s)

==========

Appearance :
MR CJ VIN on behalf of MR NS TAHILRAMANI for Appellant(s) : 1,
MR SARTHAK VYAS on behalf of PRAKASH K JANI for respondent Nos.1 to 4, 6,
Respondent No.5 is deleted,
NONE for Respondent No.7,

==========

CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 20/06/2007

ORAL JUDGMENT

1. Mr.C.J. Vin, under the authority of Mr.N.S. Tahilramani, learned counsel for the appellant and Mr.Sarthak Vyas, under the authority of Mr.Prakash K.Jani, learned counsel

for the respondent Nos.1 to 4 and 6. Name of respondent No.5 has already been deleted. None for the respondent No.7.

2. Being aggrieved by the impugned Judgment and Award to the tune of Rs.1,27,000=00 made by the learned Motor Accident Claims Tribunal (Main), Mehsana, dtd.19/12/1988 in Motor Accident Claim Petition No.295 of 1985, appellant – Insurance Company is before this Court with a submission that the policy being an “Act Policy”, the liability of the Insurance Company would be confined to a sum of Rs.50,000=00 only. He submits that the Tribunal was unjustified in fastening the entire liability upon the head of the Insurance Company.

3. Mr.Vyas, learned counsel for the claimants submits that the arguments put-forth before this Court was not raised before the tribunal, nor any issue to that effect was cast. He submits that at the appellate stage, the respondents cannot be taken by surprise.

4. After going through the records and the issues cast by the learned tribunal so also the discussion in the impugned Judgement and Award, I am unable to hold that the question now raised before this Court was raised in an apt and proper manner before the tribunal. Even

assuming that certain pleadings were raised and the tribunal committed an illegality in not casting the issues, the duty was cast upon the present appellant to crave indulgence of the tribunal with a request that proper issue be cast. If the Insurance Company was not alive to its own right at the first instance, then, after the appellant missed the bus, they cannot be allowed any reservation.

5. The appeal deserves to and is accordingly dismissed. Interim relief, if any, is vacated. No costs.

(R.S. GARG, J.)

rafik